

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

JOHN MONTANO and RUTHIE MONTANO,
Individually and as Parents and Guardians of
ZACKARY KYLE MONTANO, a minor, and
HANNAH JOY MONTANO, a minor,

Plaintiffs,

vs.

Civ. No. 99-344 RLP/WWD

ALLSTATE INDEMNITY COMPANY,

Defendant.

MEMORANDUM OPINION AND ORDER

This matter comes before the Court upon Plaintiffs' Motion to Compel [Etc.] filed April 7, 2000 [docket no. 163]. The motion addresses three items; namely, (1) more deposition time with Susan Cary, (2) having one defense counsel participate in the deposition instead of two defense counsel, and (3) production of certain documents at the deposition. Defendant contends that Ms. Cary's deposition should be limited to four hours under our previous order since she is not a "managerial employee." Defendant also contends that it "is entitled to two active defense lawyers because of the inherent conflict between the uninsured motorist claim and the bad faith claim." I shall deal with the documents sought in the attachment to the Notice to take Deposition Duces Tecum served on Ms. Cary when Defendant's Motion for Protective Order, now being circulated, is filed with the Court.

DISCUSSION.

Whether or not Ms. Cary is a "managerial" employee of Defendant, her role in the events leading up to this suit is such that the four hour restriction on the depositions of "non-managerial" employees should not be applied to her. Accordingly her deposition may be resumed. At that

deposition Defendant may have as many lawyers present as it wishes; however, only one of those lawyers shall be allowed to participate in the deposition.

Discovery shall proceed in accordance with the foregoing.

IT IS SO ORDERED.



UNITED STATES MAGISTRATE JUDGE